IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 19191 of 2004

Between:

M/S Speed Road Agencies,
D.No.12-6-1, Chinna Sattar street, Vijayawada
Represented by its Proprietor Sri L.Rama Rao

..... PETITIONER

AND

1 Commerical Tax Officer Convert, Street,
Vijayawada.
2 Regional Vigilance and Enforcement Wing Vijayawada.
3 Deputy commissioner (CT) No.I Division,
Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, or order or direction particularly one in the nature of Writ of Mandamaus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9

of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Schedule of the APGST Act read with G.O.Ms.No.910 Rev, dt. 31/12/1999 and accordingly direct the third respondent to levy sales tax on the sale of Calcium carbide and other chemicals to tax only at 8% under the aforesaid basis

Counsel for the Petitioner:MR.S.KRISHNA MURTHY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAXES. Mr. K.Rajireddy Spl. S.C. for C.T.

The Court made the following :

WRIT PETITION NO : 19190 of 2004

Between:

M/s. Sri Guru Raghavendra Traders, D. No. 12-15-36, P.J.N. Road Tarapet, Vijayawada rep by Partner Sri S. Venkateswara Rao

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada
2 Regional Vigilance and Enforcement Wing Vijayawada
3 Deputy Commissioner (CT), No.I Division, Vijayawada

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ or order or direction particularly one in the nature of writ or order or direction particularly one in the nature of Writ of mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at *% under item 9 of Schedule of the APGST Act read with G.O.Ms. No. 910 Rev, dt 31-12-1999 and accordingly direct the third respondent to levy sales tax on the sale of clacium carbide and other chemicals to tax only at 8% under the aforesaid basis

Counsel for the Petitioner:MR.S.KRISHNA MURTHY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX Mr. K.Rajireddy Spl. S.C. for C.T.

The Court made the following :

WRIT PETITION NO : 19187 of 2004

Between:

M/s. Speed Rod Agencies, D.No.12-6-1, Chinna Sattar Street, Vijayawada, rep. by its Proprietor Sri L. Rama Rao.

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijawada.
3 Deputy Commissioner (CT), No.I, Division, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to Issue a writ or order or diretion particularly one in the nature of writ of Mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8%under Item 9 of Schedu7le of the APGST Act read with G.O.Ms.No.910 Rev, dt. 31.12.1999 and accordingly direct the third respondents to levy sales tax on the sale of calcium carbide and other chemicals to tax only at 8% under the aforesaid basis or to pass.

Counsel for the Petitioner:MR.S.KRISHNA MURTHY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX Mr. K.Rajireddy Spl. S.C. for C.T.

The Court made the following :

WRIT PETITION NO : 19186 of 2004

Between:

M/s. Speed Rod Agencies, D.No. 12-6-1, Chinna Sattar Street, Vijayawada, Rep. by its Proprietor Sri L. Rama Rao.

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT), No. I Division, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction particuarly one in the nature of Writ of mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Schedule of the APGST Act read with G.O.Ms.No.910 Rev, dt. 31-12-1999 and accordingly direct the third respondent to levy sales tax on the sale of calcium carbide and other chemicals to tax only at 8% under the aforesaid basis or to pass

Counsel for the Petitioner:MR.S.KRISHNA MURTHY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX Mr. K.Rajireddy Spl. S.C. for C.T.

The Court made the following :

COMMON ORDER (Per MHSA,J)

The above four matters raise identical questions and are being disposed of by this common order.

2. The petitioners seeks a direction that the product 'Calcium Carbide' is liable to tax at the rate of 8%.

3 . When the writ petitions were filed questioning the show cause notices, interim directions were issued by this Court, restraining the respondents from passing orders.

4 . The writ petitions came to be filed directly against the show cause notices, as according to the petitioners, the Sales Tax Appellate Tribunal in the case of ***Veeranjaneya Enterprises vs. State of Andhra Pradesh*** has held that 'Calcium Carbide' does not fall under entry 9 of the Sixth Schedule "Dyes and Chemicals". The product 'Calcium Carbide' though a chemical, would fall under the Seventh Schedule.

5. However, it is not in dispute before us that the State, in exercise of the powers conferred on it by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957, has issued directions to the effect that the rate of tax on the sale of 'Calcium Carbide' in the State, shall be at eight paise in the rupee, up to 30-09-2004 only, irrespective of its classification, under the said Act.

6. The copy of the aforesaid notification of G.O.Ms.No.1021 Revenue (CT.II), dated 13th December 2004, published in the Andhra Pradesh Gazette Part-I Extraordinary, bearing No.526, dated 18th December 2004, has been placed before us.

7. As admittedly, in the case on hand, the period is prior to 30-

09-2004, it has to be held, in terms of the said Gazette that the rate of tax on the sale of 'Calcium Carbide' in the State shall be at 8%.

8 . The writ petitions are accordingly allowed in terms of the said Gazette No.526, dated 18th December, 2004. No costs.

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M.H.S. ANSARI, J

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T.Ch. SURYA RAO, J

17th February, 2005

AVS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the seventeenth of Febturary, two thousand and five.

Asst. Registrar.

To.

1 Commerical Tax Officer Convert, Street,
Vijayawada.
2 Regional Vigilance and Enforcement Wing Vijayawada.
3 Deputy commissioner (CT) No.I Division,
Vijayawada.

4. Two C.Cs. to G.P. for Commercial Taxes, High court of A.P. Buildings, Hyderabad (OUT).

5. Two C.D. copies.